IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.2172 of 2006
Date of Decision : November 22, 2006.

Harbans Kaur ..... Petitioner

Vs.

Sh.Satish Walia ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Gurcharan Singh, Advocate
for the petitioner.

Mr.Mahesh Gupta, Advocate
for the respondent.

* * *

P.S.Patwalia, J. :

The present revision petition has been filed by the petitioner aggrieved against order passed by the learned Additional District Judge, Chandigarh whereby the learned Judge allowed an application filed by the respondent, defendant in the civil suit for setting aside the judgment and decree dated 14.6.2004 in civil suit No.376 of 10.09.2003 filed by the petitioner, on payment of costs of Rs.4,000/- and allowed the respondent to participate in the proceedings in the main suit from the stage of filing of written statement. Resultantly the execution proceedings initiated by the petitioner, plaintiff decree-holder were also set aside.

The petitioner Harbans Kaur filed a suit against respondent Satish Walia for ejectment of the respondent from the demised premised which comprised of two rooms and kitchen along with toilet and bathroom

situated at Village Dariya, U.T., Chandigarh. It was alleged that the petitioner-plaintiff had inducted the respondent as a tenant in the said premises in the year 1991 at the rent of Rs.1100/- per month excluding water charges. The rent was mutually increased to Rs.1600/- per month in the year 1995. However the defendant stopped paying rent from April 1999 onwards. She thus claimed that the tenancy had been terminated and the respondent should be evicted from the premises and further claimed recovery of rent at the rate of Rs.3200/- per month amounting to Rs.84,800/- along with interest. In the said suit the defendant was proceeded against ex-parte on 29.01.2004 and thereafter the suit was decreed ex-parte on 14.6.2004. The learned trial court ordered the ejectment of the defendant from the demised premises. However the plaintiff was held entitled to arrears of rent of three years preceding the filing of the suit from September 2000 to September 2003 and also damages for subsequent use and occupation at the rate of Rs.1600/- per month with effect form September 2003 onwards till the possession was delivered. She was also held entitled to 6% interest per annum.

The petitioner filed an execution petition for executing the said decree. Before the Executing Court, the respondent-defendant took a stand that he had only come to know of the present proceedings on 8.11.2004 during the pendency of the execution petition. Immediately thereafter he visited the court and inspected the file after engaging a counsel. When he came to know about the ex-parte order and judgment and decree, he immediately moved an application under Order 9 Rule 13 of CPC for setting aside the order dated 29.01.2004 ordering ex-parte proceedings against him and also ex-parte judgment and decree dated 14.6.2004. The said application filed by the respondent-defendant was dismissed by the trial court. However on a first appeal having been filed by the respondent-defendant, the Lower Appellate Court allowed the said application and set aside the ex-parte decree and order. The respondent-defendant was allowed

to participate in the proceedings in the main suit before the trial court from the stage of filing of written statement on payment of costs of Rs.4000/-. Resultantly the execution proceedings initiated by the petitioner-plaintiff were also set aside.

The present revision petition has been filed by the petitioner, plaintiff in the suit challenging the order passed by the learned Additional District Judge, Chandigarh. I have heard learned counsel for the parties and have perused the paper book.

A reading of the orders of the courts below would show that the suit was originally instituted by the plaintiff on 10.09.2003. On that date notice was issued for 24.11.2003 for service of the defendant. The summons issued were received back with a report of refusal. The summons were available on the file of the Executing Court. A perusal of the same showed that on the first visit of the Process Server on 9.10.2003, the premises was found locked. Thereafter on 15.10.2003 also the Process Server could not meet the defendant. However on 20.11.2003, the Process Server met the defendant on the spot. A copy of the summons as also a copy of the suit were shown to the defendant. However the defendant refused to sign the same and even refused to take the summons and the copy of the suit. The Process Server has appended his affidavit in support of the correctness of the report made by him on the summons. It is important to mention that the Executing Court in its order dated 27.01.2006 has recorded that the defendant nowhere denied the report, either in his application under Order 9 Rule 13 or in the arguments. It was never contended by him that this report prepared by the Process Server was false. The relevant observations of the Court are as hereunder :-

> *"The process server had appended his affidavit in support of the correctness of the reports on the summon itself. The applicant had nowhere denied this report. Nowhere in his*

application or in the arguments, it was contested that this report was false or that this report was prepared by the process server in connivance of the respondent/DH/plaintiff. Admittedly, no complaint etc. has been made to the court or ld. Civil Judge (Senior Division), Chandigarh, on the reports."

On receipt of this report, the trial court ordered the service of the defendant by way of *munadi* for 29.01.2004. Again the summons of *munadi* were available on the original file which revealed that not only was the *munadi* effected but affixation of the summons was also done on 22.1.2004. In spite of all this the defendant did not appear on 29.1.2004 on which date the following ex-parte order was passed :-

"Present : Counsel for the plaintiff.

Defendant not appeared despite service through munadi and none has appeared on his behalf since morning. Waited sufficiently as it is already 4:00 P.M. Hence, defendant is proceeded exparte. Now to come up on 11.3.04 for exparte evidence or plaintiff.

CJ(JD)/29.1.04"

In addition to the aforesaid facts the Executing Court has also recorded that even in the execution application, the defendant/judgment debtor was duly served for 15.10.2004 and in spite of being served, he intentionally absented himself from the proceedings. Thereafter warrants of possession were ordered to be issued. The warrants could not be executed and on 9.11.2004 an application was moved on behalf of petitioner-decree holder for providing police assistance to secure possession. Notice of this application was given to *bailiff* for 18.11.2004. The *bailiff* in his report has

stated as hereunder as has been recorded by the Executing Court :-

> *".....On 18.11.2004 report of bailiff was obtained in the court and even his statement was recorded which is available in the file. In his report, he had stated on oath that on 2.11.2004 that warrant of possession was entrusted to him. On 8.11.2004 at about 11:00 a.m. when he visited the appointed premises, alongwith the attorney of decree holder, the JD, his daughter and his son were sitting with one more woman and the house was open. He shown the warrant of possession to the JD, who read the same, and requested that he will be coming within 7 minutes and will hand over the vacant possession. On the return of the JD, when the bailiff started removing the goods from the house in question, the JD and his son misbehaved with him and started pushing them from the house in question. When he was inside the room, JD locked the same and he remained there for about 10-15 minutes under the lock of the JD. Only with the intervention of the respectables of village Panchayat the door was opened. When he came outside, the JD again locked the premises and threatened the attorney of DH that a false case of eve teasing of daughter of JD will be registered. Thereafter, the police party, headed by SI Ram Parkash, came on the spot and enquired, that is why the possession could not be handed over. On 18.11.2004, an application for staying of execution proceedings was moved and copy supplied to the opposite party."*

It is therefore clear that on the one hand the respondent-Judgment Debtor did not appear before the Executing Court after being

served on 15.10.2004 and on the other hand frustrated the warrant of possession by going to the extent of illegally confining the *bailiff* who was an officer of the Court.

Apart from this it has also been recorded by the Executing Court that the respondent-Judgment Debtor is in arrears of rent and has not paid any rent since long. It is only at the stage of filing of application under Order 9 Rule 13 that he submitted a surety to a tune of Rs.1.5 lacs.

In the light of the aforesaid facts I am of the opinion that the respondent had seen the summons on 20.10.2003. He was thus very well aware of the proceedings in the suit. He had refused to accept the summons. Even in spite of that the trial court ordered substituted service. This was in consonance with the proviso to Order 5 Rule 20 CPC added by way of amendment by this Court with effect from 1.2.1977 which reads as hereunder :-

> *"Provided that if service in ordinary manner or by registered post is not effected for the first date of hearing the court may direct substituted service in such a manner as the court may deem fit, even if no application is made by or on behalf of the plaintiff for that purpose."*

I am of the opinion that the respondent-defendant was very much aware of the pendency of the suit and deliberately stayed away from the proceedings in the court. He was duly served firstly on 20.11.2003 and thereafter by way of *munadi* before 29.1.2004. His conduct is further obvious from the fact that even after being served in the execution application on 15.10.2004 he did not appear up to 18.10.2004. It is no doubt stated by the respondent that service on 15.10.2004 was effected on his son. It is clear from the report of the *bailiff* that the plaintiff has a son residing in the same house and therefore the said service would be sufficient in the facts and circumstances of the present case.

In view of the aforesaid I am of the opinion that the respondent-defendant had been duly served in the civil suit filed by the petitioner-plaintiff. He did not appear despite being duly served. He was thus rightly proceeded against ex parte. There is therefore no merit in the application under Order 9 Rule 13 filed by him. The same is accordingly dismissed. The order of the Lower Appellate Court is set aside and that passed by the JMIC-cum-CJ(JD), Chandigarh in the application under Order 9 Rule 13 filed by the respondent-defendant and in Execution Application No.51 of 2004 dated 27.01.2006 is restored. The parties would now appear before the Civil Judge (Junior Division), Chandigarh in the Execution Application No.51 of 2004 on 12.12.2006.

In view of the aforesaid the present revision petition is allowed.

November 22, 2006 (P.S.Patwalia)
monika Judge